

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

1473219 ONTARIO LIMITED,

Plaintiff/Counter-Defendant,

Case No. 12-10540

v.

Hon. John Corbett O'Meara

ALTERNATIVE AVIATION SERVICES, INC.,
and JOHN R. SHIRK,

Defendants/Counter-Plaintiffs,

and

ALTERNATIVE AVIATION SERVICES, INC.,
and JOHN R. SHIRK,

Counter-Third Party Plaintiffs/Third Party Counter-Defendants,

v.

DR. KIM CHUL,

Third Party Defendant/Third Party Counter-Plaintiff.

**ORDER DENYING MOTION TO
DISSOLVE STAY PENDING APPEAL**

Before the court is 1473219 Ontario Limited and Dr. Chul Kim's
("Plaintiffs) motion to dissolve stay pending appeal. The matter has been fully
briefed and, pursuant to L.R. 7.1(f)(2), the court dispenses with oral argument.

Simplified, this matter involves a dispute regarding payment for aircraft repairs performed by Defendants and possession of the aircraft, which is owned by Plaintiffs. Defendants are currently in possession of the aircraft, upon which they allege they have performed almost \$500,000 in repairs. Plaintiffs have not paid for the repairs, which they allege were not authorized.

On June 4, 2013, the court ordered Defendants, upon Plaintiffs' posting of a \$40,000 bond, to surrender the aircraft to Plaintiffs. Defendants have appealed that ruling and sought a stay pending appeal. The court granted a stay pending appeal on August 21, 2013.

Plaintiffs now request that the court dissolve the stay, for two reasons. First, Plaintiffs allege that Alternative Aviation Services, Inc., is no longer in business or in possession of the aircraft. Defendants have provided affidavits to the contrary, however. See Defs.' Exs. B, C, D. Second, Plaintiffs allege that Defendants have not been properly maintaining the aircraft. Again, Defendants state that the aircraft has been kept safe and maintained in a building owned by Alternative Aviation Holdings LLC (of which Alternative Aviation Services, Inc., is the sole member). See Defs.' Exs. B, C. Plaintiffs have not provided evidence that the condition of the aircraft has significantly changed or deteriorated since the court granted the

stay in August 2013.¹

Indeed, Plaintiffs have not provided evidence that circumstances have changed since August 2013 that would warrant the stay being dissolved.

Defendants have represented to the court that Alternative is in possession of the aircraft and that it has “kept the aircraft safe, secure and provided maintenance services to maintain the aircraft’s state since the beginning of the litigation.” Defs.’

Ex. B. The Sixth Circuit will resolve the issue of possession and until that time, Plaintiffs have not demonstrated that the status quo should be disturbed.

Accordingly, IT IS HEREBY ORDERED that Plaintiffs’ motion to dissolve stay pending appeal is DENIED.

s/John Corbett O’Meara
United States District Judge

Date: April 30, 2014

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, April 30, 2014, using the ECF system.

s/William Barkholz
Case Manager

¹ Plaintiffs’ expert, Todd Bates, contends that “based upon the last time [he] saw the aircraft,” it has not been properly maintained. Pls.’ Ex. 10. Mr. Bates does not state when he last saw the aircraft.